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confuse the jury, and that therefore instructions to the effect that "the burden of proof has shifted to the defendant" or "the defendant must prove by a preponderance of the evidence that he was not negligent" are not prejudicially erroneous. But it would seem that if these terms have a well-defined legal meaning, their correct use should be insisted upon, even at the risk of reversal on what seem purely technical grounds. Such is the view of the United States Supreme Court in *Sweeney v. Erving*, *supra*, which is approved in the instant case. As to whether the presumption of negligence requires or merely permits a verdict for the plaintiff if the defendant produces no evidence in rebuttal, the decisions are not in harmony. See *Sweeney v. Erving*, *supra*, and *Briglio v. Holt*, 85 Wash. 155. See WIGMORE, par. 2509, for rules governing the application of the doctrine of *res ipsa loquitur*.

SLANDER—"CROOK" NOT SLANDEROUS PER SE.—It was alleged that defendant said of plaintiff, "Madame is a crook," and that the words imputed commission of crime involving moral turpitude or infamous punishment. *Held*, the innuendo is not supported by reason or authority; that "crook" is applied to persons who are not guilty of crime, and as no special damage is alleged the cause is dismissed on demurrer. *Villemin v. Brown*, 184 N. Y. S. 570.

In the English courts and the majority of American courts it is the duty of the court to determine whether the language used in the publication can fairly or reasonably be construed to have the meaning imputed, and if the court determines it is *capable* of such construction it is then left to the jury to decide in what sense the language was used. *Hankinson v. Bilby*, 16 M. & W. 441; *Shublely v. Ashton*, 130 Ia. 195; *Downs v. Hawley*, 112 Mass. 237; *Langer v. Courier News*, 179 N. W. 909. On the other hand, in some jurisdictions, including that of the principal case, when the words are free from ambiguity or evidence tending to change their natural meaning, whether they are slanderous or libellous *per se* or not is passed upon by the court as a matter of law. *Cooper v. Greeley*, 1 Denio (N. Y.) 347; *More v. Benett*, 48 N. Y. 472; *Pugh v. McCarty*, 44 Ga. 383; *Gottbehuet v. Hubachek*, 36 Wis. 515; *Gabe v. McGinnis*, 68 Ind. 538. Determined either as a matter of fact or of law, it would seem that "crook" means a person liable to imprisonment for crime. The court in the principal case apparently treats of "crook" and "crooked" as synonymous. This may have been a source of error. While neither term is credited with a precise meaning, "crooked" commonly denotes failure to abide by the prevailing morality, whereas "crook" is a term carrying greater opprobrium, and ordinarily suggests a person who gains a livelihood by committing felonies. The class of slanders *per se* is a rigid one, but not without reason, and, as the principal case holds, whenever a plaintiff has suffered actual damage he is always at liberty to show it and recover for it.

STREET RAILROADS—CONTRIBUTORY NEGLIGENCE IN FAILING TO STOP AND LOOK A QUESTION OF FACT.—Plaintiff, while crossing defendant's street railway track, was struck by a street car and severely injured. Plaintiff's auto-

mobile was moving at a rate of two miles an hour and the street car was approaching at a speed of thirty miles an hour. Defendant moved for a peremptory instruction in its favor, contending that plaintiff's failure to stop and look before crossing constituted contributory negligence, as a matter of law, which barred his right to recover. The court refused so to instruct, and left the question of contributory negligence to the jury. *Held*, that failure to stop and look does not constitute contributory negligence as a matter of law, but is a question of fact for the jury. *Washington Ry. & Electric Co. v. Stuart* (D. C., 1920) 267 Fed. 632.

The court, in this case, clearly draws the distinction between cases involving steam railway crossings and those involving street railway crossings. The general rule in the case of steam railway crossings seems to be that failure to stop, look and listen before crossing constitutes contributory negligence as a matter of law. *Koch v. Southern California R. R.*, 148 Cal. 677, and cases there cited; *Haven v. Erie R. R.*, 41 N. Y. 296; *Northern Pacific Ry. Co. v. Freeman*, 174 U. S. 379. In the principal case the court points out that no one has a right to assume that a steam train or interurban car, operated on the company's right of way, will be under control with a view of stopping promptly if the safety of a pedestrian or other person crossing the track requires it. It also points out that street railway tracks are necessarily to be crossed with great frequency, by reason of their occupancy of public streets, and that the facility with which such cars are stopped and the frequency of their stopping make the danger measurably less than that incurred in crossing an ordinary railroad crossing. The weight of authority seems to support the distinctions here drawn. *Detroit United Ry. v. Nichols*, 165 Fed. 289; *City & Suburban Ry. Co. v. Cooper*, 32 App. D. C. 550; *McQuisten v. Detroit Street Ry.*, 148 Mich. 67.

TRIALS—MOTION FOR DIRECTED VERDICT—EFFECT OF MOTION BY BOTH SIDES.—P sued D as assignee of X. D set up as a special defense that the assignment was void because it was champertous. At the close of the testimony D moved for a directed verdict on the ground the evidence conclusively showed champerty, and P. also moved for a directed verdict, with the proviso that if the court ruled against them he be allowed to go to the jury upon the facts. The court refused to accept the conditional motion and ordered P to elect between going to the jury and moving for the directed verdict. Under protest P moved for a directed verdict, and then the court found as a fact that the assignment was champertous and rendered judgment for D. *Held*, error, for where counsel makes it plain that he wishes to go to the jury on a question of fact, a motion for a directed verdict by both sides does not present the question of fact irrevocably to the court. *Sampliner v. Motion Picture Patents Co.* (U. S., 1920), 41 Sup. Ct. Rep. 79.

While it is true, as the trial court held, that a request by both sides for directed verdict, by the great weight of authority, waives the right to trial of the facts by the jury and submits them to the court, yet it does not follow that the implication of waiver may not be rebutted by an express or implied